

**STATE OF ILLINOIS**  
**Illinois Commerce Commission**

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Petition of Neutral Tandem, Inc., and Neutral  
Tandem-Illinois, LLC  
for the Interconnection  
with Level 3 Communications LLC

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**Docket No. 07-0277**

**May 15, 2007**

**EXHIBIT 1**

Direct Testimony  
Of  
Sara Baack  
On Behalf of  
Level 3 Communications, LLC

**OFFICIAL FILE**  
**ICC**

**EVIDENCE**

**07-0277**

MAY 22, 2007

*MAY 23 - Serial 327 1a.1*

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3 **PRE-FILED DIRECT TESTIMONY OF SARA BAACK**  
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6 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

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8 **A.** My name is Sara Baack. My business address is 1025 Eldorado Boulevard,  
9 Broomfield, Colorado, 80021.

10 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

11 **A.** I am Senior Vice President in the Wholesale Markets Group with Level 3  
12 Communications ("Level 3").

13 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND?**

14 **A.** I have a BA in History and Economics from Rice University in Houston, Texas,  
15 and an MBA with High Distinction from Harvard Business School in Cambridge,  
16 Massachusetts.

17 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL WORK EXPERIENCE?**

18 **A.** I have been employed by Level 3 since 1999 in a variety of capacities ranging  
19 from strategy to operations to product management. The common thread in most  
20 of my roles at Level 3 is a focus on our voice and managed-modem (dial-up  
21 Internet access) businesses. I have served as general manager of several of our  
22 voice product lines; I have managed the business negotiation of our  
23 interconnection agreements with various ILECs; and I have led the voice network  
24 integration of Level 3's acquisitions of Genuity, Wiltel and Broadwing.  
25 I currently manage our product and network strategy organization within the  
26 Wholesale Markets Group which serves national and global service providers  
27 with integrated data, voice, and video services.

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2 Prior to joining Level 3, I was employed in private equity with PaineWebber  
3 Capital (now UBS Financial Services) investing proprietary capital in  
4 communications businesses, primarily Competitive Local Exchange Carriers  
5 (“CLECs”) and cable companies. Before that, I was an investment banker with  
6 PaineWebber Inc.

7 **Q. PLEASE BRIEFLY DESCRIBE LEVEL 3.**

8 **A.** Level 3 is an international communications company that operates one of the  
9 largest communications and Internet backbones in the world. Since its inception  
10 in 1998, the Company has focused on providing premier services on one of the  
11 world’s most advanced IP-enabled networks. Level 3 owns and operates a  
12 network with more than 47,500 route miles. We offer a complete portfolio of  
13 network offerings that includes IP services, broadband transport, collocation, our  
14 patented Softswitch managed modem, and Voice over IP (“VoIP”) services. This  
15 network is used as the foundation for providing enterprise telecommunications  
16 solutions.

17 **Q. TO WHOM DOES LEVEL 3 PROVIDE THESE SERVICES?**

18 **A.** Level 3 provides its services to a broad array of companies and business  
19 enterprises. For example, the Company’s customer set includes 18 of the world’s  
20 top 20 telephone companies, eight of the 10 largest carriers in Europe; eight of the  
21 largest 10 Internet service providers; nine of the 10 largest cable companies in the  
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2 United States, three of the four top telecommunications companies in Asia; four  
3 of the five largest wireless service providers in the United States as well as federal  
4 and state government agencies.

5 **Q. IS LEVEL 3 AUTHORIZED TO PROVIDE SERVICES IN ILLINOIS?**

6 **A.** Yes. Level 3 is authorized to operate as a facilities-based provider and reseller of  
7 telecommunications services in Illinois pursuant to a Certificate of Service  
8 Authority granted by the Commission in Docket No. 97-0676.

9 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

10 **A.** The purpose of my testimony is to refute the testimony of Neutral Tandem  
11 witnesses Wren and Saboo and to provide direct testimony in support of Level 3's  
12 positions. In this testimony I will, (1) explain how Level 3 receives traffic from  
13 the customers of Neutral Tandem; (2) show that this dispute is a crisis of Neutral  
14 Tandem's making following Level 3's lawful termination of certain agreements  
15 with Neutral Tandem; (3) demonstrate that, contrary to Neutral Tandem's claims,  
16 Level 3 does not believe the traffic from end users will be "immediately and  
17 irreparably" harmed if Level 3 and Neutral Tandem do not exchange traffic  
18 directly and that no Commission action is warranted in this case; and (4) explain  
19 that at most the only action which may be warranted is for the Commission to  
20 order Neutral Tandem to notify its customers so they can take any necessary  
21 steps to ensure that traffic is routed appropriately after June 25, 2007 when the  
22 physical interconnection facility between Level 3 and Neutral Tandem is  
23 disconnected.

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2 Finally I want to assuage any concerns that the Commission may have that calls  
3 might be blocked if all migration efforts have not been completed by June 25<sup>th</sup>  
4 that may have been created by the hysteria and rampant speculation of the Neutral  
5 Tandem witnesses in their testimony in describing a billing letter that Level 3  
6 recently sent to Neutral Tandem.

7 **Q. PLEASE DESCRIBE THE TRAFFIC THAT IS EXCHANGED BETWEEN**  
8 **NEUTRAL TANDEM AND LEVEL 3.**

9 **A.** The traffic that Level 3 receives from Neutral Tandem is not traffic from end-  
10 users of Neutral Tandem but from other carriers who have end-users calling  
11 telephone numbers on the Level 3 network. The traffic is either locally-dialed  
12 voice or bound for an Internet service provider on the Level 3 network.

13 **Q. CAN YOU PLEASE PROVIDE AN EXAMPLE?**

14 **A.** Yes. Let's say hypothetically that Comcast offers voice service and that its  
15 customer wants to reach a family member who gets phone service from Out of the  
16 Box VoIP service. Further, let's assume that Comcast has its own facilities and  
17 that Out of the Box VoIP purchases local interconnection and telephone services  
18 from Level 3.

19 When the End User customer picks up her phone, let's assume that she dials 312-  
20 555-5555 to reach the Out of the Box customer on the Level 3 network. (For  
21 purposes of this example, I'm assuming 10-digit dialing is required). The call  
22 traverses the Comcast network and the switch will recognize that the NPA-NXX  
23 code is associated with the Level 3 network.

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2       At that point, there are a number of potential routing options available, and the  
3       Comcast switch has a decision to make. One option is to route the call over a  
4       direct physical interconnection trunk between Level 3 and Comcast. If that's the  
5       case, a third party transit provider is not involved in that call flow. This is  
6       accomplished where Comcast and Level 3 have previously entered into a  
7       commercially negotiated agreement to both create points of interconnection and to  
8       determine the appropriate compensation, if any, between the parties. Once the  
9       parties have reached such a commercially negotiated agreement and created the  
10      physical interconnection between the networks, the parties will exchange traffic.  
11      If Comcast and Level 3 have not established direct interconnection facilities,  
12      Comcast would then route the call over the network of another provider that does  
13      have interconnection with Level 3. In this case, it can be either the Incumbent  
14      Local Exchange Carrier ("ILEC") or a third party provider that has created direct  
15      interconnection and that has reached some commercial arrangement to receive the  
16      traffic from Level 3. If Comcast chooses to route the call through the ILEC  
17      network, the call would go over the interconnection trunks that Comcast has with  
18      the ILEC, who would then switch the call and route it to the interconnection  
19      trunks that the ILEC has with Level 3. This is how most CLEC-to-CLEC traffic  
20      is exchanged today.  
21      If Comcast does not have direct interconnection with the terminating carrier or  
22      does not want to route the traffic via the ILEC, the originating network will need  
23      to find a third party to route the call to Level 3.

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That is the service that an alternate transit provider offers. Since the transit provider does not originate any traffic, it is a bridge between two networks. It offers originating carriers another option to facilitate the termination of traffic. In this instance, if Neutral Tandem had a commercial arrangement with Comcast and Level 3, Neutral Tandem would take the call from Comcast and hand it off to Level 3 for termination.

**Q. WITNESS WREN HAS TESTIFIED THAT NEUTRAL TANDEM IS THE ONLY INDEPENDENT TANDEM PROVIDER IN THE COUNTRY. DO YOU AGREE?**

**A.** Neutral Tandem is the only company that has modeled its entire business plan on providing tandem transit services, but it does not follow that Neutral Tandem is the only CLEC that provides tandem transit as an alternative to the ILEC. Even using Neutral Tandem's definition of tandem transit service, Level 3 provides this service, as did some of the carriers we acquired during the past eighteen months. There is no doubt that tandem transit services are available from other alternative carriers. Scores of carriers provide some form of transit service when they carry traffic from one carrier to another carrier. What is unique about Neutral Tandem is that it is the only CLEC offering transit services without also having end user customers of its own or providing basic local exchange services.

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2   **Q.    IS THIS A SIGNIFICANT DISTINCTION?**

3   **A.    Yes. This distinction is important for the way in which Neutral Tandem employs**  
4           it to argue for favorable treatment.

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6           Neutral Tandem's witnesses argue that it should receive the regulatory treatment  
7           reserved for the ILECs solely because it has created a transit service as the sole  
8           element of its business model. Neutral Tandem appears to be trying to obtain  
9           through a regulatory proceeding the same terms or conditions that the state  
10          commissions have established for transit services provided by the incumbent  
11          provider. Neutral Tandem argues that it is somehow uniquely situated and  
12          therefore should be treated just like an ILEC as a matter of public policy.

13          When Level 3 interconnects with an ILEC, there are significant benefits to Level  
14          3 associated with that agreement. For example, we get the right to deliver traffic  
15          to the ILEC's end users on balanced economic terms; this benefit is not available  
16          in Neutral Tandem's case. The "interconnection" that Neutral Tandem seeks is  
17          one-way and solely for Neutral Tandem's benefit. Because Neutral Tandem does  
18          not have end users, Level 3 does not send traffic to terminate on Neutral  
19          Tandem's network over those interconnection trunks, and therefore achieves no  
20          benefit from interconnecting directly.

21          We manage a very large interconnection network with most ILECs, and the ILEC  
22          pays Level 3 for approximately 90% of the traffic that we accept over that  
23          infrastructure; that benefit is not available in Neutral Tandem's case.

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2 Under Neutral Tandem's proposed interconnection arrangement with Level 3, we  
3 pay Neutral Tandem for traffic it transits from Level 3 to other carriers but we  
4 receive zero compensation from Neutral Tandem on the traffic Neutral Tandem  
5 delivers to us.

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7 Neutral Tandem (or any other CLEC for that matter) should not be able to  
8 "cherry-pick" a single provision out of an interconnection agreement with an  
9 ILEC. ILECs, in fact, are no longer required to allow any CLEC to "cherry-pick"  
10 such provisions in their *mandated* interconnection agreements.

11 Overall, Level 3 incurs costs to manage interconnection with Neutral Tandem, but  
12 would get no economic, network efficiency or other business benefit from the  
13 relationship that Neutral Tandem seeks to impose. If any "alternate transit"  
14 provider -- and I submit that there are many -- were afforded the preferential  
15 benefits that Neutral Tandem is seeking, that is, forced, free, perpetual  
16 interconnection with any other CLEC that it chooses, the Commission should be  
17 prepared for a long line of requests from future petitioners.

18 **Q. WAS THERE A COMMERCIAL AGREEMENT BETWEEN LEVEL 3**  
19 **AND NEUTRAL TANDEM TO PROVIDE FOR THE EXCHANGE OF**  
20 **THIS TRANSIT TRAFFIC?**

21 **A.** Level 3 had multiple commercial agreements with Neutral Tandem that covered  
22 the terms and conditions for the bridging of traffic between Level 3's end users  
23 and the customers of other network providers.

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One of these commercial agreements was called "Agreement for Wireline Network Interconnection" between Level 3 and Neutral Tandem dated July 6, 2004 (the "Level 3 Agreement"). The Level 3 Agreement set forth terms and conditions (including payment terms) for Level 3's delivery of transit termination services to Neutral Tandem in New York, Michigan, and Illinois.

Level 3 also signed a separate commercial agreement governing its purchase of transit services from Neutral Tandem. Finally, as a result of acquisition activities, Level 3 also inherited two other commercial agreements with Neutral Tandem that I will discuss in more detail later.

**Q. DID ANY PUBLIC UTILITY COMMISSION ESTABLISH THE TERMS OR FORCE LEVEL 3 AND NEUTRAL TANDEM INTO THE PREVIOUS COMMEERCIAL AGREEMENTS?**

**A.** No. All of our agreements were freely negotiated and represented the commercial interests of both parties. In his direct testimony, Witness Wren referred to the Level 3 Agreement as a "privately-negotiated agreement...agreed to by Neutral Tandem in consideration of establishing a two-way business relationship with Level 3." (Wren direct testimony, p.9). At the time of those negotiations, Neutral Tandem entered into commercial discussions without making any of the claims that it is making today regarding entitlement to direct interconnection under various state law theories.

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2 In fact, and consistent with the private nature of these agreements, at no time  
3 were any of these commercial agreements ever presented to this or any other  
4 Public Utility Commission for its consideration and approval.

5 Just as importantly, in the Level 3 Agreement the parties included a provision  
6 requiring Neutral Tandem to pay Level 3 a "Usage Sensitive Transport Recovery  
7 Charge."

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11 The Level 3 Agreement had a term of one year and allows termination of the  
12 agreement after the initial term upon 30 days notice. Neither party committed to  
13 purchase any specified quantity of services from the other under the Level 3  
14 Agreement.

15 **Q. DOES LEVEL 3 HAVE ANY OTHER COMMERCIAL AGREEMENTS**  
16 **FOR THE EXCHANGE OF TRAFFIC WITH NEUTRAL TANDEM?**

17 **A.** Level 3 completed six acquisitions between the summer of 2005 through 2006  
18 including the purchase of ICG Communications and Broadwing Communications.  
19 Both ICG and Broadwing, through its purchase of Focal Communications, had  
20 executed commercial agreements with Neutral Tandem.

21 **Q. WERE THESE COMMERCIAL AGREEMENTS THE SAME?**

22 **A.** No. Both the ICG and the Focal agreements were styled as Master Services  
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2 agreements based on Neutral Tandem's standard form customer agreement, and  
3 their main purpose was to establish the terms and conditions for ICG's and  
4 Focal's purchase of services from Neutral Tandem. Neither agreement required  
5 Neutral Tandem to pay a fee for the termination of transit traffic delivered to  
6 Focal or ICG. The Focal agreement and the ICG agreement each had initial terms  
7 of two years, and each agreement is terminable by either party upon expiration by  
8 providing 30 days notice of termination. The ICG agreement remains in force.

9 **Q. WHAT IS THE SIGNIFICANCE OF THE DIFFERENCES IN**  
10 **COMPENSATION BETWEEN THE LEVEL 3 AND BROADWING**  
11 **AGREEMENTS?**

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13 **A.** These agreements highlight the nature of commercial negotiations and the  
14 differing interests of different carriers. One would expect that if two different  
15 carriers with different business models, networks and economic considerations  
16 negotiated an agreement with a third-party, they would negotiate different  
17 agreements. That is what happened in this case. Neutral Tandem seems to  
18 believe that having once negotiated a termination rate of zero with one carrier, it  
19 should forever receive that rate with any other carrier, regardless of the  
20 differences in economics or other considerations involved.

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**Q. WHAT WERE THE TERMS OF THE ORIGINAL COMPENSATION  
PAID BY NEUTRAL TANDEM TO LEVEL 3?**

A. The original compensation terms in the Level 3 Agreement required Neutral Tandem to pay Level 3 a per minute of usage charge for traffic that is originated by an end user of one of Neutral Tandem's customers and terminated to the Level 3 network.

**Q. WHAT DID LEVEL 3 DO AFTER COMPLETING ITS ACQUISITIONS?**

A. As part of merger integration planning, Level 3 began to evaluate its interconnection and traffic exchange agreements as well as all agreements pursuant to which Level 3 procured services from third parties. This was important because the acquisitions substantially changed Level 3's traffic pattern for VoIP, local, and long distance traffic, and, internally, we needed to prioritize both human and network resources to support our integration activity.

As a result of this review, we determined that the traffic exchange agreements with respect to Level 3 and Broadwing no longer made commercial or economic sense. Level 3 then exercised its contractual right to terminate those commercial agreements with Neutral Tandem with a goal of negotiating new agreements that were commercially sensible. The contract with ICG remains in effect and covers the states of Ohio and Colorado.

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**Q. WHY DIDN'T THESE COMMERCIAL AGREEMENTS MAKE SENSE ANYMORE?**

**A.** Because of a change in the balance and make-up of the traffic of the combined companies, the existing commercial agreements with Neutral Tandem were no longer economical and efficient to maintain, and, frankly, no longer in the best economic interest of Level 3. We learned during the integration process that neither company had managed the contracts well. As I mentioned earlier, the markets where Level 3 exchanged traffic with Neutral Tandem expanded through "ordering creep" to include states that were not covered by that agreement. Moreover, the terms under which Neutral Tandem provided remuneration to Level 3 were based on a complicated formula that only Neutral Tandem could calculate, inhibiting transparency to Level 3 and making our billing difficult. Level 3 was required to engage considerable time and effort to perform augments on its network to support a contract with Neutral Tandem that had grown far beyond the original commercial boundaries contemplated in the contract.

Given the out-of-balance traffic flows between the two parties and the associated economic costs, the resource burden imposed on Level 3, and the need to rationalize agreements and commercial relationships across Level 3's various

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2       acquired entities, continued management of a transit termination network for  
3       Neutral Tandem did not make sense because, even without that network, Level 3  
4       would still be able to receive traffic from Neutral Tandem's customers through  
5       the mutual interconnection arrangements with the ILECs. Thus, we were  
6       spending time and money maintaining a separate termination network just to  
7       service Neutral Tandem.

8       **Q:    IS MAINTAINING A SEPARATE TERMINATION NETWORK BAD?**

9       **A.**    It is not always bad; however, generally, it is more efficient and economical to  
10       aggregate traffic and circuits rather than to have duplicative infrastructures. In  
11       this context, because Level 3 already maintains connections with the ILECs  
12       nationally, through which Level 3 receives monthly approximately 26 billion  
13       minutes of all types of traffic (most of it traffic for which the ILECs pay Level 3  
14       directly), it is easier and less costly to augment those connections to accommodate  
15       additional traffic than it is to install, maintain and grow a separate transit network  
16       for the small amount of traffic Level 3 receives from Neutral Tandem. While it  
17       might make sense for us to do so in the context of a broader contractual  
18       relationship or in a situation where Neutral Tandem were compensating Level 3  
19       appropriately, the agreements we terminated did not make sense in their current  
20       form.

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Immediately after sending notice of termination, we advised Neutral Tandem that we desired to negotiate a new commercial agreement that would govern all the traffic that Neutral Tandem wanted Level 3 to terminate.

**Q. WITNESS WREN HAS SUGGESTED IN HIS DIRECT TESTIMONY THAT LEVEL 3's ACTION IN TERMINATING THE CONTRACT IS MOTIVATED BY "IMPROPER AND UNLAWFUL MOTIVES" (WREN DIRECT TESTIMONY p. 20). HOW DO YOU RESPOND TO THAT ASSERTION?**

**A.** This assertion is without merit and based on pure speculation by Mr. Wren. I have already discussed the business reasons why termination made sense to Level 3 and why the existing relationship served to benefit only Neutral Tandem's business plans. Level 3's termination of the Level 3 and Focal contracts was in keeping with the terms and conditions of those contracts – terms and conditions that both parties freely negotiated. Neutral Tandem has not and can not argue otherwise. There is not an illegal or unlawful motive that can be attributed to the termination of a contract that by its own terms permits termination. Level 3 exercised the right given to it under the contract to extricate itself from the obligation to accept traffic from Neutral Tandem according to terms that benefit only Neutral Tandem and hurt Level 3. As I stated, Neutral Tandem has rejected Level 3's repeated attempts to negotiate new terms and instead has initiated these proceedings.

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**Q. WHAT TRANSPIRED AFTER LEVEL 3 TERMINATED THE  
COMMERCIAL AGREEMENTS?**

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**A.** The parties engaged in several discussions. In the course of these discussions, Level 3 made several proposals. Neutral Tandem rejected each proposal and instead asserted that Level 3 was legally obligated to interconnect with Neutral Tandem and prohibited from charging Neutral Tandem anything to terminate traffic.

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**Q. IS LEVEL 3 WILLING TO INTERCONNECT WITH NEUTRAL  
TANDEM TO EXCHANGE TRAFFIC?**

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**A.** Yes. That has been our position since we began negotiations. What we cannot do is physically interconnect with Neutral Tandem on terms that only Neutral Tandem finds commercially attractive. In the absence of a mutually acceptable,

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negotiated direct connection relationship with Neutral Tandem, Level 3 will accept traffic destined to its customers from third-party originating carriers through AT&T. That is exactly how this traffic was exchanged prior to the existence of the traffic exchange agreements between Level 3 and Neutral Tandem.

**Q. IS DIRECT INTERCONNECTION BETWEEN COMPETITIVE CARRIERS THE EXCEPTION RATHER THAN THE RULE?**

**A.** Generally, competitive carriers indirectly interconnect because the lower level of traffic they exchange does not justify the cost and inefficiencies of directly connecting with every other competitive provider. Nonetheless, there are instances in which direct interconnection can be an effective method for carriers to exchange traffic. The circumstances under which direct interconnection makes operational and economic sense to a particular carrier vary from carrier to carrier and on a case-by-case basis and are not readily susceptible to a particular threshold, e.g., 1 DS-1, 3 DS-1s, a DS-3, etc. These carrier-specific circumstances of an interconnection decision are one of the primary reasons regulators have left such decisions to each individual competitive carrier and to the commercial negotiation process when establishing traffic exchange agreements rather than forcing a particular result. Forcing a competitive carrier to establish or maintain an inefficient, uneconomic interconnection, as Neutral Tandem seeks here,

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2 undermines this process. Neutral Tandem admitted in other proceedings that  
3 direct connection with multiple carriers can be inefficient economically and from  
4 a network management perspective. (Petition of Neutral Tandem – New York  
5 LLC for Interconnection with Level 3 Communications and Request for Order  
6 Preventing Service Disruption, Case No. 07-C-0233, Tr. at 74-75). (NY P.S.C.);  
7 Petition of Neutral Tandem, Inc. for Interconnection with Level 3  
8 Communications and Request for Emergency Relief, Docket No. 24844-U, Tr. at  
9 83 (GA P.S.C.) Apparently forced interconnection that benefits Neutral Tandem  
10 is exempt from Neutral Tandem's view.

11 **Q. WHEN LEVEL 3 INITIALLY DELIVERED ITS NOTICE TO**  
12 **TERMINATE, WHAT WAS THE EFFECTIVE DATE OF THE**  
13 **TERMINATION?**

14 **A.** Level 3 first delivered written notice of termination of the Level 3 Agreement on  
15 January 30, 2007. That would have terminated the Level 3 Agreement effective as  
16 of March 1, 2007. In subsequent discussions, we agreed to provide more time to  
17 negotiate and postponed termination until March 23, 2007. Level 3 then delivered  
18 written notice to terminate the Focal Agreement with an effective date of March  
19 23, 2007. When efforts to conclude negotiations on a replacement agreement  
20 appeared to be at an impasse, we advised Neutral Tandem that we would proceed  
21 down the path of termination of both agreements and asked them to work with us  
22 to ensure traffic would be rerouted. Neutral Tandem refused and initiated actions,  
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2 like this one, against Level 3 in various state regulatory commissions. At all  
3 times during our communications, we advised Neutral Tandem that we were  
4 ready, willing, and able to work with them to minimize disruption in service upon  
5 termination of the agreements.

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7 Neutral Tandem refused to communicate with Level 3 on this topic.  
8 Consequently, Level 3 later unilaterally extended the termination date to June 25,  
9 2007 to provide Neutral Tandem more time to notify its customers.

10 **Q. WASN'T LEVEL 3 CONCERNED THAT IF THE COMMERCIAL**  
11 **AGREEMENTS WERE TERMINATED THAT END-USERS ON THE**  
12 **LEVEL 3 NETWORK WOULD NOT RECEIVE CALLS FROM**  
13 **CUSTOMERS OF NEUTRAL TANDEM?**

14 **A.** It is important to remember that the calls involved in this proceeding will  
15 terminate to Level 3 customers. We have absolutely no incentive or desire to  
16 have our customers not receive those calls. It's not good for business. However,  
17 as I mentioned earlier regarding the alternate paths available for a call that a third-  
18 party carrier has destined for Level 3, we believe that if Neutral Tandem advises  
19 its customers of the termination of our agreements, those customers can make  
20 arrangements to reprogram their switches to route the traffic through the ILEC,  
21 and to increase their capacity with ILEC in those limited circumstances where that  
22 may be necessary. Therefore, the traffic destined for customers on Level 3's  
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2 network would then route to Level 3 through direct interconnections between  
3 Neutral Tandem's customers and the ILEC, just as it did before Neutral Tandem  
4 entered the market. Furthermore, the amount of traffic carried from Neutral  
5 Tandem to Level 3 in Illinois is relatively insignificant and thus, by implementing  
6 a migration plan, we do not believe that the situation described by Neutral  
7 Tandem will be outside normal calling experiences.  
8

9 **Q. WITNESS SABOO HAS STATED IN HIS DIRECT TESTIMONY THAT**  
10 **THE ILEC TANDEMS MAY NOT BE SUFFICIENT TO HANDLE THE**  
11 **TRAFFIC IF THE LEVEL 3 INTERCONNECTION TO NEUTRAL**  
12 **TANDEM IS TERMINATED (SABOO DIRECT TESTIMONY p.4). IS**  
13 **THIS TRUE?**

14 **A.** No. This claim is unrealistic and highlights Neutral Tandem's lack of information  
15 about its customers' networks specifically and the PSTN in Illinois generally.  
16 Level 3 estimates that about 3.5 billion minutes pass through the ILEC tandems in  
17 Illinois each month. According to Witness Wren, Neutral Tandem sends to Level  
18 3, under the Level 3 Agreement and the inherited agreement with Broadwing,  
19 roughly 56 million minutes per month. Exchanging this traffic through the ILEC  
20 tandems would mean a 1.5% increase in total transit traffic served by those  
21 facilities. This is insignificant and likely well within the ILEC's forecasting  
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**Q. HAVE AFFECTED CARRIERS BEEN NOTIFIED BY NEUTRAL  
TANDEM OF THE SITUATION SUCH THAT THEY CAN PREPARE  
ALTERNATE ROUTING PLANS?**

**A.** To our knowledge, they have not. Level 3 has repeatedly offered in writing to work with Neutral Tandem and its customers to ensure the orderly flow of traffic in the event an agreement cannot be reached by June 25, 2007. Level 3 has repeatedly requested confirmation that Neutral Tandem has notified its customers of the impending termination of the traffic-exchange relationship between the parties such that all impacted parties can make alternate routing arrangements. All of these invitations and requests to cooperate have been ignored. I believe this is a purposeful attempt to cultivate the threat of traffic disruption for its customers that Neutral Tandem claims in its complaint in order to create an “emergency”. Rather than spend its time since the contract termination negotiating a new agreement or working to prepare its customers and its own network to address the impact, as Level 3 has been doing since early February, Neutral Tandem has admitted in another state proceeding that it has made no such preparations. (Petition of Neutral Tandem – New York, LLC for Interconnection with Level 3 Communications and Request for Order Preventing Service Disruption, Case No. 07-C-0233, Tr. at 139). (NY P.S.C.); Petition of Neutral Tandem, Inc. for Interconnection with Level 3 Communications and Request for

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Emergency Relief, Docket No. 24844-U, Tr. at 106-107 (GA P.S.C.)). Instead, Neutral Tandem has threatened Level 3 with additional litigation if Level 3 contacts Neutral Tandem's customers who might be impacted in an effort to ensure our contract termination has no adverse impact on traffic. Neutral Tandem ignores its own role here by failing to negotiate a new agreement or by not notifying its customers of the need to ensure sufficient capacity to route traffic.

**Q. PLEASE RESPOND TO WITNESS SABOO'S CLAIMS REGARDING THE DIFFICULTY ITS CUSTOMERS MAY HAVE IN RE-ROUTING TRAFFIC SHOULD LEVEL 3 DISCONNECT NEUTRAL TANDEM'S EXISTING CONNECTIONS (SABOO DIRECT TESTIMONY, p. 4).**

**A.** Neutral Tandem has admitted in other proceedings that it has no idea what its carrier customers' networks look like nor what each carrier would need to do in order to migrate or re-route its traffic through the ILEC tandem. (Petition of Neutral Tandem – New York, LLC for Interconnection with Level 3 Communications and Request for Order Preventing Service Disruption, Case No. 07-C-0233, Tr. at 62-63). 63 (NY P.S.C.); Petition of Neutral Tandem, Inc. for Interconnection with Level 3 Communications and Request for Emergency Relief, Docket No. 24844-U, Tr. at 103-105 (GA P.S.C.); Petition of Neutral Tandem, Inc. for an Interconnection Agreement with Level 3 Communications and Request for Interim Order, Docket 07-02-29, Tr. at 135-137 (CT D.P.U.C). In fact, as I

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2 just stated, Neutral Tandem has not even notified its customers of this potential in  
3 order to determine what steps its customers might need to take or to offer its  
4 customers any assistance in doing so. Therefore, Neutral Tandem is speculating  
5 when it claims that these carriers will have to materially augment their  
6 interconnection trunks or purchase additional transport.

7 It is equally possible that these carriers already have sufficient capacity to the  
8 ILEC tandems or can easily add such capacity. Indeed, prior to Neutral Tandem's  
9 entry into the market, these carriers did exchange traffic with Level 3 through the  
10 AT&T tandems and would have had sufficient facilities in place to do so. As  
11 discussed in the testimony of Mr. Gates, even the most loyal Neutral Tandem  
12 customer will always maintain interconnection facilities with AT&T. These  
13 facilities are required for transit to the carrier destinations not covered by Neutral  
14 Tandem or other alternate transit providers and for traffic terminating to AT&T  
15 customers. Mr. Gates also discusses common standardized methods that carriers  
16 use to ensure that there is no blocking of traffic.

17 **Q. WITNESS SABOO ALSO CLAIMS THAT IT WOULD TAKE UP TO 6**  
18 **MONTHS TO REARRANGE TRANSPORT AND MAKE SWITCH**  
19 **TRANSLATIONS TO REROUTE TRAFFIC TO AT&T. (SABOO DIRECT**  
20 **TESTIMONY p.6) PLEASE RESPOND TO THAT CLAIM.**

21 **A.** Witness Saboo's 6-month estimate is unreliable and self-contradicted. First, he  
22 states that before any of Neutral Tandem's customers can augment their trunks,  
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2 "Level 3 must first augment its capacity with AT&T." (Saboo direct testimony, p.  
3 6) Level 3 has already done so in anticipation of the re-routing of this traffic.  
4 Level 3 began this step immediately following its notice of termination to Neutral  
5 Tandem. As Neutral Tandem conceded elsewhere, it has done nothing to prepare  
6 for the migration of traffic. Second, Neutral Tandem has admitted in other  
7 proceedings that it has no information about the architecture and the capacity of  
8 its customers' existing networks and therefore cannot state with any certainty  
9 what each carrier would need to do, if anything, to re-route its traffic away from  
10 Neutral Tandem. Third, Neutral Tandem has admitted in another proceedings that  
11 in its experience an individual carrier can typically complete any augments, if  
12 they are even necessary, in only 60-90 days, not six months. (Petition of Neutral  
13 Tandem – New York, LLC for Interconnection with Level 3 Communications and  
14 Request for Order Preventing Service Disruption, Case No. 07-C-0233, Tr. at 56).  
15 Carriers could complete any necessary switch re-programming during this same  
16 period. Notably, it would take carriers less than one hour for any carrier to  
17 program its switches to route calls destined to Level 3 to transit the ILECs' switch.  
18 This is completed through simple keystrokes to route traffic that is associated with  
19 a Level 3 NPA-NXX. It goes without saying that if Neutral Tandem had notified  
20 its customers when Level 3 first terminated the contract in January 2007, its  
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2 customers could have completed any necessary network and switch modifications  
3 by now.

4 **Q. WITNESS WREN DESCRIBES THE POSSIBLE LOSS OF GOODWILL**  
5 **THAT NEUTRAL TANDEM MIGHT SUFFER IN THE EYES OF IT'S**  
6 **CUSTOMERS BY THE LOSS OF TERMINATIONS WITH LEVEL 3.**  
7 **(WREN DIRECT TESTIMONY pp. 23-24) HOW DOES LEVEL 3**  
8 **RESPOND?**

9 **A.** Neutral Tandem has lost track of who is responsible for Neutral Tandem's  
10 reputation in the marketplace and that is Neutral Tandem.  
11 When Neutral Tandem voluntarily entered the market, it offered to originating  
12 carriers the ability to terminate calls to other networks. In order to accomplish its  
13 business objectives, Neutral Tandem became a CLEC, presumably to obtain direct  
14 interconnection rights with an ILEC and direct or indirect interconnection rights  
15 with CLECs. It was paramount for Neutral Tandem to develop business  
16 relationships with terminating carriers before it could offer to provide transit  
17 services to an originating carrier. If the company could not terminate the traffic,  
18 Neutral Tandem really had nothing to offer. So from the beginning, Neutral  
19 Tandem has been in control of its business reputation and has been responsible for  
20 ensuring that it had the appropriate business relationships in place to service its  
21 customers. That's the same basic business principle under which all businesses  
22 operate. I fail to see any realism in the dramatic claims Neutral Tandem makes  
23 when all that is at issue here is *one* of its 19 carrier interconnection relationships

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in Illinois. In fact, if *one* of 19 carrier interconnection relationships were as critical to Neutral Tandem's viability as it leads the Commission to believe, then why wouldn't Neutral Tandem have managed the relationship more closely? In this proceeding, Neutral Tandem is attempting to manufacture an extraordinary event out of an every day situation that every competitive carrier deals with, that is, the termination of a business relationship that doesn't create mutual value. As we discussed, Neutral Tandem agreed to a set of commercial arrangements with Level 3 and its affiliates that were terminable on 30 days notice.

Neutral Tandem had that right as did Level 3. As a network operator, Neutral Tandem must manage its interconnection arrangements with terminating carriers in such a way to ensure that it can provide the services it offers to originating carriers. That responsibility belongs to Neutral Tandem and no one else. From the start of negotiations with Level 3, Neutral Tandem has had an opportunity to protect its interests by reaching *another* commercially negotiated arrangement with Level 3. However, Neutral Tandem has refused to do so and has resorted to creating new legal theories to demand interconnection on terms that it wishes to dictate. Illinois should decline Neutral Tandem's invitation to create a new regulatory regime for competitive transit providers.

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**Q. IS IT YOUR POSITION THAT IF ANY LOSS IN GOODWILL OCCURS TO NEUTRAL TANDEM ON ACCOUNT OF THE DISCONNECTION OF ANY INTERCONNECTION TRUNKS WITH LEVEL 3 IT HAS BEEN SELF-INFLICTED?**

**A.** Absolutely. As I understand Neutral Tandem's position, it is concerned that customers will be upset with any loss of connectivity to Level 3 and may therefore perceive Neutral Tandem negatively in the marketplace. The harm Neutral Tandem claims will befall it is grossly exaggerated; however, if and to the extent any such harm occurs, Neutral Tandem has no one to blame but itself. And its customers might very well be upset, and rightfully so. Neutral Tandem has the ability, independent of any action taken by this Commission, to mitigate and/or avoid any disruption to its customers by either reaching a commercial agreement with Level 3 or appropriately notifying its customers so that they can take the steps necessary to reroute the traffic. If it fails to do either, I agree that its business reputation would be harmed. Neutral Tandem's reputation is not, nor should it be dependent upon compelled and free delivery of termination services from Level 3. Any harm results solely from Neutral Tandem's actions.

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2 **Q. EARLIER IN YOUR TESTIMONY YOU ALLUDED TO A**  
3 **BILLING LETTER THAT YOU RECENTLY SENT TO NEUTRAL**  
4 **TANDEM. WHAT WAS THE PURPOSE OF THE LETTER AND WHAT**  
5 **DOES IT PROPOSE?**

6 **A.** Neutral Tandem has attempted to make much in this proceeding out of the alleged  
7 havoc and disruption that will occur to the operations of Neutral Tandem's  
8 customers if the physical interconnection between Level 3 and Neutral Tandem is  
9 allowed to be disconnected on June 25<sup>th</sup>. We think that Neutral Tandem's self-  
10 serving claims of disruption to these customers are both highly exaggerated and  
11 the by-product of the ongoing failure of Neutral Tandem to notify its customers of  
12 the impasse between our two companies. The letter that I sent Neutral Tandem, a  
13 copy of which is attached to my testimony as Exhibit 1.1, informs Neutral  
14 Tandem that Level 3 will bill Neutral Tandem for any traffic that Level 3 accepts  
15 for termination at the rate of \$.001 per minute of use after June 25<sup>th</sup>.  
16 This should provide a "safety net" for those customers, if any, who need some  
17 additional time to migrate traffic as a consequence of Neutral Tandem's failure to  
18 timely notify them of the June 25<sup>th</sup> disconnection of the physical interconnection  
19 with Level 3.

20 **Q. WHAT IS LEVEL 3 ASKING THE COMMISSION TO DO?**

21 **A.** Level 3 is asking the Commission to decline the request of Neutral Tandem to  
22 create a new interconnection regime for competitive transit service providers by  
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2 denying Neutral Tandem's request for emergency relief and declining to establish  
3 the rates and terms of commercial interconnection. Instead, the Commission  
4 should honor the terms of the original agreements between the companies and  
5 order Neutral Tandem to take the appropriate steps to notify its customers of any  
6 possible service disruption, as required by Neutral Tandem's tariff, so that Level 3  
7 can remove the interconnection facilities that it has in place with Neutral Tandem.  
8 While Level 3 is willing to work with Neutral Tandem to mitigate potential  
9 customer impact, the Commission should not impose any obligation on Level 3  
10 that would require it to terminate traffic Neutral Tandem's traffic beyond June 25,  
11 2007, or as ordered by the Commission, unless Level 3 is compensated. Level 3 is  
12 terminating this commercially negotiated agreement because it no longer makes  
13 commercial sense for Level 3, and the Commission would only be extending that  
14 harm if it required Level 3 to provide free services to Neutral Tandem.

15 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

16 **A.** Yes.

**STATE OF ILLINOIS**  
**Illinois Commerce Commission**

**Petition of Neutral Tandem, Inc., and Neutral  
Tandem-Illinois, LLC  
for the Interconnection  
with Level 3 Communications LLC**

**Docket No. 07-0277**

**May 15, 2007**

## EXHIBIT 1.1

Direct Testimony  
Of  
Sara Baack  
On Behalf of  
Level 3 Communications, LLC

May 8, 2007

Mr. Rian Wren  
Chief Executive Officer  
Neutral Tandem, Inc.  
One South Wacker, Suite 200  
Chicago, IL 60606

Mr. Surendra Saboo  
Chief Financial Officer  
Neutral Tandem, Inc.  
One South Wacker, Suite 200  
Chicago, IL 60606

RE: Termination of Transit Traffic Delivered to Level 3 Communications, LLC ("Level 3")

Dear Sirs:

On January 30 and on February 14, 2007, Level 3 advised Neutral Tandem, Inc. ("Neutral Tandem") of the lawful termination of 2 agreements between Level 3 and Neutral Tandem which contained economic and other terms for Level 3's termination of Neutral Tandem transit traffic. Each agreement was terminable on 30 days' notice. Notwithstanding the termination provisions of each agreement, Level 3 unilaterally decided to continue to accept and terminate Neutral Tandem's transit traffic until June 25, 2007, so as to permit Neutral Tandem to notify its customers of the discontinuance of traffic routing to Level 3 via Neutral Tandem. Neutral Tandem had nearly 6 months to prepare for, plan and complete any activities relating to the termination of our previous business arrangements.

Since that time, Neutral Tandem has admitted that it has taken no such steps. Further, it appears from Neutral Tandem's conduct that it does not intend to take any actions to migrate traffic or otherwise to perform steps to prepare its customers for their ability to terminate traffic to Level 3. Instead, Neutral Tandem's sole strategy has been to sue Level 3 to compel continued delivery of service by Level 3.

This letter is to advise you that, commencing on June 25, 2007, if and to the extent that Neutral Tandem, Inc. ("Neutral Tandem") elects to deliver transit traffic to Level 3 for termination, and if Level 3 elects to terminate such traffic on Neutral Tandem's behalf, Level 3 will charge Neutral Tandem at a rate of \$0.001 per minute terminated. Level 3 reserves all other rights available to it under applicable law, including the right to terminate the acceptance and delivery of Neutral Tandem's transit traffic.

The nationwide rate that we propose, on a blended basis, represents a significant discount to the ILEC transit rates otherwise available to Neutral Tandem or its customers. In addition, we note that Neutral Tandem will be able to recover these fees from the originating carrier pursuant to terms and conditions in Neutral Tandem's relevant state tariffs or the Master Services Agreement

Mr. Rian Wren  
Mr. Surrendra Saboo  
May 8, 2007  
Page 2 of 2

contained as part of Neutral Tandem's S-1 filing. Of course, it is up to Neutral Tandem as to whether it will seek any recovery from its customers. Level 3 is not asking Neutral Tandem to act as a clearinghouse with respect to compensation that might be owed by originating carriers, but instead is assessing a market based charge for the use of a terminating network by a transiting provider.

By continuing to send traffic to Level 3 for termination from and after June 25, 2007, Neutral Tandem will be evidencing its acceptance of these financial terms.

Sincerely,



Sara Baack  
Senior Vice President  
Wholesale Markets Group

cc: Mr. John Harrington  
Jenner & Block  
3300 N. Wabash Avenue  
Suite 4700  
Chicago, IL 60611